

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BRIAN CHARLES VAETH

Plaintiff,

v.

Case No. ELH-18-1600

**MAYOR & CITY COUNCIL OF BALTIMORE,
FIRE & POLICE EMPLOYEES' RETIREMENT
SYSTEM OF BALTIMORE**

Defendants,

**MOTION FOR LEAVE TO SUPPLEMENT PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS OR IN THE ALTERNATIVE SUMMARY JUDGMENT**

Plaintiff, appearing pro se, respectfully requests this Court to permit the filing of a supplement to the opposition filed in response to Defendants' Motion to Dismiss or in the Alternative Summary Judgment in this matter and presents the following in support of this request. An application for leave to file a supplemental pleading should be freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any of the other parties to the action.

ARGUMENT

Federal Rule of Civil Procedure 15(d) authorizes, with permission of the court, the filing of supplemental pleadings. Rule 15(d) provides that a party may "serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented."

The initial Complaint alleging that Defendants commit fraud on the Court was filed on June 4, 2018.

On September 12, 2018, Defendants filed a Motion to Dismiss or in the Alternative Summary Judgment.

Plaintiff filed an Opposition to Defendants' Motion to Dismiss or in the Alternative Summary Judgment on September 29, 2018.

Since the filing of his opposition motion, Plaintiff has obtained knowledge of information that has been disclosed that is relevant to this matter. Plaintiff's current motion attempts to submit additional details that occurred after the filing of that opposition that are relevant to this action and should be made known to this Court. The information supports the assertions Plaintiff made in his complaint that corruption in the F&PERS is ongoing today and has not stopped since he began filing complaints regarding it. The details are as follows:

Plaintiff's complaint is replete with assertions that the retirement process for City employees, especially police and firefighters, is corrupt and misconduct goes unchecked. On September 13, 2018, it was reported that the executive director and chief investment officer of the \$1.8 billion Baltimore City Employees' Retirement System was terminated after a finding by the Baltimore City Inspector General that a retirement plan official had misused assets to renovate the Retirement Savings Plan offices. The OIG found that the official did not follow proper procedures for obtaining approval for the use of the funds, withheld forfeiture fund accounting information from other city employees, disregarded explicit legal challenges by the former retirement plan administrator, and directed money to flow through three separate entities before paying the contractor for work performed, as is alleged by the OIG. (Exhibit 1)

The forfeiture funds consist of contributions to the fund that the employee makes through payroll deductions paid to the retirement system. The City of Baltimore makes a more significant contribution to that employee's retirement account. When an employee is no longer a member of the retirement system, the employee is refunded the contributions they made through payroll deductions and the retirement system keeps the money the City contributed to the member. This shows the agency has an interest in denying retirement benefits to members and does so by any means possible, up to and including committing fraud on this Court, if necessary.

On October 4, 2018, another report by the Baltimore City OIG's office revealed that more misconduct was evident in the Employees' Retirement System. The OIG charged, through the ongoing

investigation that disclosed the aforementioned allegations of misconduct, that a board member of the Employees' Retirement System recruited an official wherein a professional relationship existed but was never disclosed to the board. (Exhibit 2)

The OIG found that this professional relationship dated back to at least 1985 and these two persons were engaged in several business ventures. This relationship was not disclosed to the rest of the board. As a result, the official recommended that the retirement system should invest no less than \$15 million into a fund managed by an investment firm with whom the official held personal investments. It is reported that the two officials are currently engaged in a project to build a 190-mile gas pipeline on the Eastern Shore. This case shows that the proper oversight is not exercised by Defendants and it permits the misconduct to occur and each time fraud is successfully perpetrated against the retirement system, it only empowers officials to commit more fraud. Plaintiff's complaints over the last decade that have absolutely been ignored by Defendants that asserted allegations of fraud, mirror the findings in the OIG's report and could have gone a long way to deter the illegal behavior from occurring had they been investigated. This investigation should have commenced without allowing Baltimore City officials to obstruct it. It is obvious that the obstruction committed thwarted any attempt to provide the appropriate oversight required by officials charged with doing so. This information demonstrates that the misconduct exists and in the case of the Consent Decree settlement in *United States of America v. Baltimore Police Department, et al.* (JKB-17-0099) supports Plaintiff's allegations that it has existed for a very long time and is endemic throughout all levels of City government.

On June 21 2017, Plaintiff filed a complaint for Declaratory Judgment and for the Issuance of a Temporary Restraining Order and Permanent Injunctive Relief in the Circuit Court for Baltimore City (24C17003372) over the City's failure to pay the medical bills related to Plaintiff's injury, as detailed in the complaint before this Court, but after being told by the clerk that he could not obtain the relief requested, which was to order the City to meet their financial obligations, he filed a Motion to Voluntarily Withdraw that action on October 6, 2017. Plaintiff has not received a response from the Circuit Court to his motion for over a year now.

In preparation for this action, Plaintiff made a formal request to the City of Baltimore for evidence that they have in their possession that is evidence of the fraud, as Plaintiff has alleged. A letter was sent to the Baltimore City Solicitor requesting specific contents of his employment and medical file. Plaintiff received a letter from the Baltimore City Solicitor that basically stonewalled his attempt to obtain the evidence required. Due to the continued efforts of Defendants to block the disclosure of this information, Plaintiff began the pursuit of his legal remedies in order to obtain it. Plaintiff has complied with the Local Government Tort Claims Act notification requirements before filing that action (24C18004604). Defendant's have not complied with that request and filed a Motion to Dismiss Plaintiff's complaint. Defendants assert that they emailed Plaintiff with this information that instructed him to a link to his employment file online. Plaintiff never received this email. Plaintiff did receive a hard copy of what Defendants assert is the information Plaintiff requested but it is not. The Circuit Court for Baltimore City has scheduled a motion hearing on the matter for October 31, 2018. (Exhibit 3)

This action is important because many of the medical costs related to the original surgery remain unpaid to this day. This presents Plaintiff with a situation that is causing numbness in his lower extremities and the numbness is advancing up his legs. That alone is alarming, but Plaintiff's immediate concern is that numbness reaching vital internal organs in his pelvis will affect the natural function of these organs. Additionally, Plaintiff doesn't know if that numbness will stop there and not affect the function of other organs. It is assumed that this numbness could be the result of the buildup of surgical scar tissue, as was demonstrated to cause these problems in a prior surgery related to the same injury.

It is disturbing how much influence the City of Baltimore is asserting over Plaintiff's life now because of lies and the unlawful withholding of relevant evidence from all investigatory agencies charged with oversight of the actions of Defendants and their continuing obstruction in their willful withholding of evidence from the Court. Plaintiff cannot receive treatment for his current health challenges because the medical bills from the accident remain unpaid almost twenty years later. If Plaintiff experiences a life-threatening medical emergency, the Patient's Bill of Rights requires a hospital to stabilize him only until he can be received by a hospital that accepts patients who are similarly situated.

Recently, Plaintiff experienced back pain and sought treatment for it at several emergency departments but was informed of the situation and was turned away because he was not experiencing a life-threatening emergency. When Plaintiff began experiencing chest pains, he was transported to the hospital. Plaintiff was admitted due to his demonstrating extremely high blood pressure, an elevated heart rate, and a blood glucose level over 300. Further examination revealed that Plaintiff was suffering from an infection in his back and required surgery to excise it. Had Plaintiff been able to obtain the health care services related to this early on, the extreme nature of the emergent situation would never have occurred.

This is also troubling due to the nature of the job and the medical problems firefighters face long after they have left the fire service. Firefighters are reporting incidents of cancer, heart disease, and respiratory problems in higher rates than ever. As it stands now, Plaintiff cannot receive preventive healthcare services until these situations present themselves to be life-threatening. Additionally, as Plaintiff has included in his complaint, firefighters found to suffer from Post-Traumatic Stress Disorder similar to that of members of our military serving in active war-zones. Plaintiff has not been able to obtain the service of healthcare professionals to assess the level of PTSD that he suffers from now. For the reason Plaintiff has set forth in the complaint, in relation to his duty status being that of which can be matched by no another City firefighter that he is aware of at the time, Plaintiff certainly has demonstrated the symptoms of it. Defendants attacked his credibility without regard for the condition, or even assessing to find out how extensive his symptoms were. Defendants were well aware of this being a concern when Plaintiff was subjected to the administrative process while he was undergoing surgery for it and was not represented by counsel in the proceedings. The following is from the International Association of Firefighters that explains it sufficiently to raise the alarm to it:

“Most fire fighters and paramedics are exposed to potentially traumatic events as a normal part of their jobs. Following certain bad calls, some may have a strong reaction. They replay the event in their minds, have difficulty sleeping or experience strong, upsetting thoughts and feelings.

By talking with others and engaging in self-care, these common stress reactions often subside over time. However, when these symptoms persist or intensify, or there’s a delayed stress reaction months or years after an event, the fire fighter or

paramedic could be experiencing Post-Traumatic Stress Disorder (PTSD), a diagnosable and treatable mental health condition.

Help is possible, but only if fire fighters and paramedics recognize the signs of this condition and talk about them.

Fortunately, the stigma associated with PTSD is fading. The worry about being perceived as “weak” is giving way to a growing concern about untreated PTSD and suicide. Fire fighters and paramedics with PTSD are finally coming out of the shadows, talking about their PTSD experience and getting help.

So, as a fire fighter, paramedic, family member or friend, what can you do?

Have your fire fighters’ and paramedics’ backs.

At the kitchen table or in the bunk room, if you notice a change in an individual’s behavior or mood, be on the lookout for these five warning signs of PTSD:

- Isolation from others
- Disturbed sleep
- Increased irritability
- Decreased interest in significant activities
- Self-destructive or reckless behavior

Be honest about your own experience.

Sometimes, it’s easier to recognize PTSD in others rather than ourselves. If you are experiencing any of these five hidden warning signs of PTSD, take action.

Intrusive memories or thoughts of a traumatic event:

- Avoidance of thoughts, feelings or external reminders of the event
- Feelings of numbness
- Hypervigilance or exaggerated states of fear
- Persistent, negative beliefs about yourself and the world

Ignoring or keeping quiet about these warning signs can be dangerous. PTSD is a real health problem that needs to be treated. Recognizing the warning signs and talking about the issue helps connect people to the help they need.”¹

Defendants insist that Plaintiff is somehow abusing the judicial process in the filing of allegedly spurious claims. Plaintiff has gone to extraordinary efforts to get Defendants to uphold their responsibility without success. As Plaintiff gets older, the healthcare situations Plaintiff will certainly face related to the job, will become increasingly problematic and may affect his ability to care for himself.

¹ <https://www.iaffrecoverycenter.com/blog/recognizing-ptsd-fire-fighters-5-warning-signs/>

For the reasons presented in the foregoing, Plaintiff respectfully request that this supplemental information be included in his Opposition to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Nottingham, Maryland 21236
(410) 931-4423

Dated: October 10, 2018

CERTIFICATE OF SERVICE

I, Brian Charles Vaeth, hereby certify that a copy of the foregoing complaint has been mailed to counsel for the City of Baltimore via USPS first class, postage prepaid, this 10th day of October 2018.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236
(410) 931-4423